

§ 78b. Necessity for regulation

For the reasons hereinafter enumerated, transactions in securities as commonly conducted upon securities exchanges and over-the-counter markets are affected with a national public interest which makes it necessary to provide for regulation and control of such transactions and of practices and matters related thereto, including transactions by officers, directors, and principal security holders, to require appropriate reports to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto, and to impose requirements necessary to make such regulation and control reasonably complete and effective, in order to protect interstate commerce, the national credit, the Federal taxing power, to protect and make more effective the national banking system and Federal Reserve System, and to insure the maintenance of fair and honest markets in such transactions:

(1) Such transactions (a) are carried on in large volume by the public generally and in large part originate outside the States in which the exchanges and over-the-counter markets are located and/or are effected by means of the mails and instrumentalities of interstate commerce; (b) constitute an important part of the current of interstate commerce; (c) involve in large part the securities of issuers engaged in interstate commerce; (d) involve the use of credit, directly affect the financing of trade, industry, and transportation in interstate commerce, and directly affect and influence the volume of interstate commerce; and affect the national credit.

(2) The prices established and offered in such transactions are generally disseminated and quoted throughout the United States and foreign countries and constitute a basis for determining and establishing the prices at which securities are bought and sold, the amount of certain taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and the value of collateral for bank loans.

(3) Frequently the prices of securities on such exchanges and markets are susceptible to manipulation and control, and the dissemination of such prices gives rise to excessive speculation, resulting in sudden and unreasonable fluctuations in the prices of securities which (a) cause alternately unreasonable expansion and unreasonable contraction of the volume of credit available for trade, transportation, and industry in interstate commerce, (b) hinder the proper appraisal of the value of securities and thus prevent a fair calculation of taxes owing to the United States and to the several States by owners, buyers, and sellers of securities, and (c) prevent the fair valuation of collateral for bank loans and/or obstruct the effective operation of the national banking system and Federal Reserve System.

(4) National emergencies, which produce widespread unemployment and the dislocation of trade, transportation, and industry, and

which burden interstate commerce and adversely affect the general welfare, are precipitated, intensified, and prolonged by manipulation and sudden and unreasonable fluctuations of security prices and by excessive speculation on such exchanges and markets, and to meet such emergencies the Federal Government is put to such great expense as to burden the national credit.

(June 6, 1934, ch. 404, title I, § 2, 48 Stat. 881; Pub. L. 94-29, § 2, June 4, 1975, 89 Stat. 97.)

AMENDMENTS

1975—Pub. L. 94-29 inserted “to remove impediments to and perfect the mechanisms of a national market system for securities and a national system for the clearance and settlement of securities transactions and the safeguarding of securities and funds related thereto,” after “require appropriate reports,” in introductory provisions preceding par. (1).

EFFECTIVE DATE OF 1975 AMENDMENT

Section 31(a) of Pub. L. 94-29 provided that: “This Act [enacting sections 78k-1, 78o-4, 78q-1, and 78kk of this title, amending this section and sections 77d, 77x, 77yyy, 78c, 78d-1, 78f, 78h, 78k, 78l, 78m, 78o, 78o-3, 78q, 78s, 78u, 78w, 78x, 78y, 78bb, 78ee, 78ff, 78iii, 79z-3, 80a-9, 80a-10, 80a-13, 80a-15, 80a-16, 80a-18, 80a-31, 80a-35, 80a-48, 80b-3, 80b-4, and 80b-17 of this title, and enacting provisions set out as notes under sections 78a and 78f of this title] shall become effective on the date of its enactment [June 4, 1975] except as hereinafter provided. The amendments made by this Act to sections 3(a)(12), 6(a) through (d), 11A(b), 15(a), 15A, 15B(a), 17A(b), and (c), and 19(g) of the Securities Exchange Act of 1934 [sections 78c(a)(12), 78f(a) through (d), 78k-1(b), 78o(a), 78o-3, 78o-4(a), 78q-1(b) and (c), and 78s(g) of this title] shall become effective one hundred eighty days after the date of enactment of this Act [June 4, 1975], and the amendments made by this Act to section 31 of the Securities Exchange Act of 1934 [section 78ee of this title] shall become effective on January 1, 1976. Neither the provisions of section 3(a)(3), 6(b)(2), or 6(c)(1) of the Securities Exchange Act of 1934 (as amended by this Act) [section 78c(a)(3), 78f(b)(2), or 78f(c)(1) of this title] nor any rule or regulation thereunder shall apply so as to deprive any person of membership in any national securities exchange (or its successor) of which such person was, on the date of enactment of this Act [June 4, 1975], a member or a member firm as defined in the constitution of such exchange or so as to deny membership in any such exchange (or its successor) to any natural person who is or becomes associated with such member or member firm.”

STUDY AND REPORT ON IMPACT OF TECHNOLOGICAL ADVANCES ON SECURITIES MARKETS

Pub. L. 104-290, title V, § 510(a), Oct. 11, 1996, 110 Stat. 3450, provided that:

“(1) STUDY.—

“(A) IN GENERAL.—The Commission shall conduct a study of—

“(i) the impact of technological advances and the use of on-line information systems on the securities markets, including steps that the Commission has taken to facilitate the electronic delivery of prospectuses to institutional and other investors;

“(ii) how such technologies have changed the way in which the securities markets operate; and

“(iii) any steps taken by the Commission to address such changes.

“(B) CONSIDERATIONS.—In conducting the study under subparagraph (A), the Commission shall consider how the Commission has adapted its enforcement policies and practices in response to technological developments with regard to—

“(i) disclosure, prospectus delivery, and other customer protection regulations;

“(ii) intermediaries and exchanges in the domestic and international financial services industry;

“(iii) reporting by issuers, including communications with holders of securities;

“(iv) the relationship of the Commission with other national regulatory authorities and organizations to improve coordination and cooperation; and

“(v) the relationship of the Commission with State regulatory authorities and organizations to improve coordination and cooperation.

“(2) REPORT.—Not later than 1 year after the date of enactment of this Act [Oct. 11, 1996], the Commission shall submit a report to the Congress on the results of the study conducted under paragraph (1).”

JOINT STUDY ON IMPACT OF ADDITIONAL SECURITIES BASED ON POOLED OBLIGATIONS

Pub. L. 103-325, title II, §209, Sept. 23, 1994, 108 Stat. 2202, provided that:

“(a) JOINT STUDY REQUIRED.—The Board and the Commission shall conduct a joint study of the impact of the provisions of this subtitle [subtitle A [§§201-210 of title II of Pub. L. 103-325], see Short Title of 1994 Amendment note set out under section 78a of this title] (including the amendments made by this subtitle) on the credit and securities markets. Such study shall evaluate—

“(1) the impact of the provisions of this subtitle on the availability of credit for business and commercial enterprises in general, and the availability of credit in particular for—

“(A) businesses in low- and moderate-income areas;

“(B) businesses owned by women and minorities;

“(C) community development efforts;

“(D) community development financial institutions;

“(E) businesses in different geographical regions; and

“(F) a diversity of types of businesses;

“(2) the structure and operation of the markets that develop for small business related securities and commercial mortgage related securities, including the types of entities (such as pension funds and insurance companies) that are significant purchasers of such securities, the extent to which such entities are sophisticated investors, the use of credit enhancements in obtaining investment-grade ratings, any conflicts of interest that arise in such markets, and any adverse effects of such markets on commercial real estate ventures, pension funds, or pension fund beneficiaries;

“(3) the extent to which the provisions of this subtitle with regard to margin requirements, the number of eligible investment rating categories, preemption of State law, and the treatment of such securities as government securities for the purpose of State investment limitations, affect the structure and operation of such markets; and

“(4) in view of the findings made pursuant to paragraphs (2) and (3), any additional suitability or disclosure requirements or other investor protections that should be required.

“(b) REPORTS.—

“(1) IN GENERAL.—The Board and the Commission shall submit to the Congress a report on the results of the study required by subsection (a) before the end of—

“(A) the 2-year period beginning on the date of enactment of this Act [Sept. 23, 1994];

“(B) the 4-year period beginning on such date of enactment; and

“(C) the 6-year period beginning on such date of enactment.

“(2) CONTENTS OF REPORT.—Each report required under paragraph (1) shall contain or be accompanied by such recommendations for administrative or legislative action as the Board and the Commission consider appropriate and may include recommendations regarding the need to develop a system for reporting

additional information concerning investments by the entities described in subsection (a)(2).

“(c) DEFINITIONS.—As used in this section—

“(1) the term ‘Board’ means the Board of Governors of the Federal Reserve System; and

“(2) the term ‘Commission’ means the Securities and Exchange Commission.”

INTERMARKET COORDINATION; REPORTS TO CONGRESS

Pub. L. 101-432, §8(a), Oct. 16, 1990, 104 Stat. 976, provided that: “The Secretary of the Treasury, the Chairman of the Board of Governors of the Federal Reserve System, the Chairman of the Securities and Exchange Commission, and the Chairman of the Commodity Futures Trading Commission, shall report to the Congress not later than May 31, 1991, and annually thereafter until May 31, 1995, on the following:

“(1) the efforts their respective agencies have made relating to the coordination of regulatory activities to ensure the integrity and competitiveness of United States financial markets;

“(2) the efforts their respective agencies have made to formulate coordinated mechanisms across marketplaces to protect the payments and market systems during market emergencies;

“(3) the views of their respective agencies with respect to the adequacy of margin levels and use of leverage by market participants; and

“(4) such other issues and concerns relating to the soundness, stability, and integrity of domestic and international capital markets as may be appropriate. The agencies shall cooperate in the development of their reports, and prior to submitting its report to Congress, each agency shall provide copies to the other agencies.”

SECURITIES LAWS STUDY

Pub. L. 100-704, §7, Nov. 19, 1988, 102 Stat. 4682, directed Securities and Exchange Commission to study and investigate adequacy of Federal securities laws and regulations for protection of the public interest and interests of investors, specified subjects for the study and investigation and authority of Commission in conducting the study and investigation, directed Commission to supply interim information to Congress on the progress of, and any impediments to completing, the study and investigation, directed Commission to report to Congress on results of the study and investigation within 18 months after the date funds are appropriated for the study and investigation, including in such report the Commission's recommendations.

FOREIGN INVESTMENT STUDY

Pub. L. 93-479, Oct. 26, 1974, 88 Stat. 1450, directed Secretary of the Treasury and Secretary of Commerce to conduct a comprehensive, overall study of foreign direct and portfolio investments in the United States and submit to Congress an interim report twelve months after Oct. 26, 1974, and not later than one and one-half years after Oct. 26, 1974, a full and complete report of the findings made under the study authorized, together with such recommendations as they considered appropriate.

EX. ORD. NO. 11858. FOREIGN INVESTMENT IN THE UNITED STATES

Ex. Ord. No. 11858, May 7, 1975, 40 F.R. 20263, as amended by Ex. Ord. No. 12188, Jan. 2, 1980, 45 F.R. 989; Ex. Ord. No. 12661, Dec. 27, 1988, 54 F.R. 779; Ex. Ord. No. 12860, Sept. 3, 1993, 58 F.R. 47201; Ex. Ord. No. 13286, §57, Feb. 28, 2003, 68 F.R. 10629, provided:

By virtue of the authority vested in me by the Constitution and statutes of the United States of America, including the Act of February 14, 1903, as amended (15 U.S.C. 1501 et seq.), section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a), and section 301 of title 3 of the United States Code, and as President of the United States of America, it is hereby ordered as follows:

SECTION 1. (a) There is hereby established the Committee on Foreign Investment in the United States (hereinafter referred to as the Committee). The Committee shall be composed of the following:

- (1) The Secretary of State.
- (2) The Secretary of the Treasury.
- (3) The Secretary of Defense.
- (4) The Secretary of Commerce.
- (5) The United States Trade Representative.
- (6) The Chairman of the Council of Economic Advisers.
- (7) The Attorney General.
- (8) The Secretary of Homeland Security.
- (9) The Director of the Office of Management and Budget.
- (9)[sic] the Director of the Office of Science and Technology Policy.
- (10) The Assistant to the President for National Security Affairs.
- (11) the Assistant to the President for Economic Policy.

The Secretary of the Treasury shall be the chairman of the Committee. The chairman, as he deems appropriate, may invite representatives of other departments and agencies to participate from time to time in activities of the Committee.

(b) The Committee shall have primary continuing responsibility within the Executive Branch for monitoring the impact of foreign investment in the United States, both direct and portfolio, and for coordinating the implementation of United States policy on such investment. In fulfillment of this responsibility, the Committee shall:

- (1) arrange for the preparation of analyses of trends and significant developments in foreign investments in the United States;
- (2) provide guidance on arrangements with foreign governments for advance consultations on prospective major foreign governmental investments in the United States;
- (3) review investments in the United States which, in the judgment of the Committee, might have major implications for United States national interests;
- (4) consider proposals for new legislation or regulations relating to foreign investment as may appear necessary; and
- (5) coordinate the views of the Executive Branch and discharge the responsibilities with respect to Section 721(a) and (e) of the Defense Production Act of 1950 [50 U.S.C. App. 2170(a), (e)], as amended (50 U.S.C. App. 2061 *et seq.*) ("Defense Production Act").

(c) As the need arises, the Committee shall submit recommendations and analyses to the National Security Council and to the Economic Policy Board. It shall also arrange for the preparation and publication of periodic reports.

SEC. 2. The Secretary of Commerce, with respect to the collection and use of data on foreign investment in the United States, shall provide, in particular, for the performance of the following activities:

- (a) The obtainment, consolidation, and analysis of information on foreign investment in the United States;
- (b) the improvement of procedures for the collection and dissemination of information on such foreign investment;
- (c) the close observation of foreign investment in the United States;
- (d) the preparation of reports and analyses of trends and of significant developments in appropriate categories of such investment;
- (e) the compilation of data and preparation of evaluations of significant investment transactions; and
- (f) the submission to the Committee of appropriate reports, analyses, data and recommendations relating to foreign investment in the United States, including recommendations as to how information on foreign investment can be kept current.

SEC. 3. The Secretary of the Treasury is authorized, without further approval of the President, to make reasonable use of the resources of the Exchange Stabiliza-

tion Fund, in accordance with section 10 of the Gold Reserve Act of 1934, as amended (31 U.S.C. 822a) [31 U.S.C. 5302], to pay any of the expenses directly incurred by the Secretary of Commerce in the performance of the functions and activities provided by this order. This authority shall be in effect for one year, unless revoked prior thereto.

SEC. 4. All departments and agencies are directed to provide, to the extent permitted by law, such information and assistance as may be requested by the Committee or the Secretary of Commerce in carrying out their functions and activities under this order.

SEC. 5. Information which has been submitted or received in confidence shall not be publicly disclosed, except to the extent required by law; and such information shall be used by the Committee only for the purpose of carrying out the functions and activities prescribed by this order. Information or documentary material filed pursuant to Section 1(b)(5) or Section 7 of this Order shall be treated in accordance with paragraph (b) of Section 721 of the Defense Production Act [50 U.S.C. App. 2170(b)].

SEC. 6. Nothing in this order shall affect the data-gathering, regulatory, or enforcement authority of any existing department or agency over foreign investment, and the review of individual investments provided by this order shall not in any way supersede or prejudice any other process provided by law.

SEC. 7. (1) *Investigations.* (a) The Committee is designated to receive notices and other information, to determine whether investigations should be undertaken, and to make investigations, pursuant to Section 721(a) of the Defense Production Act [50 U.S.C. App. 2170(a)]. (b) If the Committee determines that an investigation should be undertaken, such investigation shall commence no later than 30 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. Such investigation shall be completed no later than 45 days after such determination. (c) If one or more Committee members differ with a Committee decision not to undertake an investigation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision within 25 days after receipt by the Committee of written notification of the proposed or pending merger, acquisition, or takeover. (d) A unanimous decision by the Committee not to undertake an investigation with regard to a notice shall conclude action under this section on such notice. The Chairman shall advise the President of said decision.

(2) *Report to the President.* Upon completion or termination of any investigation, the Committee shall report to the President and present a recommendation. Any such report shall include information relevant to subparagraphs (1) and (2) of Section 721(d) of the Defense Production Act. If the Committee is unable to reach a unanimous recommendation, the Chairman shall submit a report of the Committee to the President setting forth the differing views and presenting the issues for his decision.

SEC. 8. The Chairman of the Committee, in consultation with other members of the Committee, is hereby delegated the authority to issue regulations to implement Section 721 of the Defense Production Act [50 U.S.C. App. 2170].

EX. ORD. NO. 12631. WORKING GROUP ON FINANCIAL MARKETS

Ex. Ord. No. 12631, Mar. 18, 1988, 53 F.R. 9421, provided: By virtue of the authority vested in me as President by the Constitution and laws of the United States of America, and in order to establish a Working Group on Financial Markets, it is hereby ordered as follows:

SECTION 1. *Establishment.* (a) There is hereby established a Working Group on Financial Markets (Working Group). The Working Group shall be composed of:

- (1) the Secretary of the Treasury, or his designee;
- (2) the Chairman of the Board of Governors of the Federal Reserve System, or his designee;

(3) the Chairman of the Securities and Exchange Commission, or his designee; and

(4) the Chairman of the Commodity Futures Trading Commission, or her designee.

(b) The Secretary of the Treasury, or his designee, shall be the Chairman of the Working Group.

SEC. 2. *Purposes and Functions.* (a) Recognizing the goals of enhancing the integrity, efficiency, orderliness, and competitiveness of our Nation's financial markets and maintaining investor confidence, the Working Group shall identify and consider:

(1) the major issues raised by the numerous studies on the events in the financial markets surrounding October 19, 1987, and any of those recommendations that have the potential to achieve the goals noted above; and

(2) the actions, including governmental actions under existing laws and regulations (such as policy coordination and contingency planning), that are appropriate to carry out these recommendations.

(b) The Working Group shall consult, as appropriate, with representatives of the various exchanges, clearinghouses, self-regulatory bodies, and with major market participants to determine private sector solutions wherever possible.

(c) The Working Group shall report to the President initially within 60 days (and periodically thereafter) on its progress and, if appropriate, its views on any recommended legislative changes.

SEC. 3. *Administration.* (a) The heads of Executive departments, agencies, and independent instrumentalities shall, to the extent permitted by law, provide the Working Group such information as it may require for the purpose of carrying out this Order.

(b) Members of the Working Group shall serve without additional compensation for their work on the Working Group.

(c) To the extent permitted by law and subject to the availability of funds therefor, the Department of the Treasury shall provide the Working Group with such administrative and support services as may be necessary for the performance of its functions.

RONALD REAGAN.

§ 78c. Definitions and application

(a) Definitions

When used in this chapter, unless the context otherwise requires—

(1) The term “exchange” means any organization, association, or group of persons, whether incorporated or unincorporated, which constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange as that term is generally understood, and includes the market place and the market facilities maintained by such exchange.

(2) The term “facility” when used with respect to an exchange includes its premises, tangible or intangible property whether on the premises or not, any right to the use of such premises or property or any service thereof for the purpose of effecting or reporting a transaction on an exchange (including, among other things, any system of communication to or from the exchange, by ticker or otherwise, maintained by or with the consent of the exchange), and any right of the exchange to the use of any property or service.

(3)(A) The term “member” when used with respect to a national securities exchange means (i) any natural person permitted to ef-

fect transactions on the floor of the exchange without the services of another person acting as broker, (ii) any registered broker or dealer with which such a natural person is associated, (iii) any registered broker or dealer permitted to designate as a representative such a natural person, and (iv) any other registered broker or dealer which agrees to be regulated by such exchange and with respect to which the exchange undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules. For purposes of sections 78f(b)(1), 78f(b)(4), 78f(b)(6), 78f(b)(7), 78f(d), 78q(d), 78s(d), 78s(e), 78s(g), 78s(h), and 78u of this title, the term “member” when used with respect to a national securities exchange also means, to the extent of the rules of the exchange specified by the Commission, any person required by the Commission to comply with such rules pursuant to section 78f(f) of this title.

(B) The term “member” when used with respect to a registered securities association means any broker or dealer who agrees to be regulated by such association and with respect to whom the association undertakes to enforce compliance with the provisions of this chapter, the rules and regulations thereunder, and its own rules.

(4) BROKER.—

(A) IN GENERAL.—The term “broker” means any person engaged in the business of effecting transactions in securities for the account of others.

(B) EXCEPTION FOR CERTAIN BANK ACTIVITIES.—A bank shall not be considered to be a broker because the bank engages in any one or more of the following activities under the conditions described:

(i) THIRD PARTY BROKERAGE ARRANGEMENTS.—The bank enters into a contractual or other written arrangement with a broker or dealer registered under this chapter under which the broker or dealer offers brokerage services on or off the premises of the bank if—

(I) such broker or dealer is clearly identified as the person performing the brokerage services;

(II) the broker or dealer performs brokerage services in an area that is clearly marked and, to the extent practicable, physically separate from the routine deposit-taking activities of the bank;

(III) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement clearly indicate that the brokerage services are being provided by the broker or dealer and not by the bank;

(IV) any materials used by the bank to advertise or promote generally the availability of brokerage services under the arrangement are in compliance with the Federal securities laws before distribution;

(V) bank employees (other than associated persons of a broker or dealer who are qualified pursuant to the rules of a self-regulatory organization) perform